

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 29 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KISHORE B SETALVAD

Versus

COMMISSIONER OF WEALTH TAX

Appearance:

1. WEALTH TAX REFERENCE No. 29 of 1987
MR KH KAJI for Petitioner No. 1
MR BB NAIK for MR MANISH R BHATT for Respondent No. 1
-

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 04/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

This is a reference made by the Income Tax Appellate Tribunal, Ahmedabad under section 27 of the Wealth Tax Act, 1957 ("the Act" for brevity). At the instance of the assessee, the following questions have been referred for our opinion :-

- (i) "Whether, on the facts and in the circumstances of the case and on proper interpretation of the provisions of section 4 (1)(b), 4(2) and 4 (7) of the W.T. Act, 1957, the Tribunal was justified in upholding the action of the W.T. authorities in determining the value of the assessee's 1/4th interest in the open plots in question in two cooperative housing societies at Rs.40,125/- ?"
- (ii) "Whether, on the facts and in the circumstances of the case, the Tribunal was justified in rejecting the assessee's miscellaneous applications on the ground that there was no mistake in its order dated 14-7-1986 ?"

2. The assessee is an individual. The assessment year is 1979-80 and the relevant valuation date is 31st March, 1979.

The assessee along with his three brothers owned two open plots in New Brahma Kshatriya Cooperative Housing Society Ltd. and one plot in Samasta Brahma Kshatriya Cooperative Housing Society Ltd. by buying qualifying shares of the said societies. Each of the brothers had 1/4th interest in all the three plots of the lands. The total value of all the three plots was assessed at the relevant time at Rs.1,60,500/- and the assessee's 1/4th interest in the said plots was, therefore, assessed at Rs.40,125/-. The assessee took up the stand that since his valuer had not properly considered various restrictions contained in the byelaws of the two societies, his 1/4th interest valued at Rs.40,125/- was not proper. According to the assessee, at the highest only the deposits amounting to Rs.20,000/made with the societies could be considered as assets for wealth tax purposes and since the assessee had 1/4th interest in such deposits, only Rs.5000/- could be included in his net wealth. The Inspecting Assistant Commissioner (Assessments) negatived the assessee's contention on the ground that the approved valuer of the assessee had considered the byelaws of the societies properly. The IAC (Assessments) accordingly determined the net wealth which included Rs.40,125/being the value

of 1/4th interest in the plots in question. In appeal, the Commissioner of Wealth Tax (Appeals) upheld the decision of the IAC (Assessments).

3. In his appeal before the Tribunal, the assessee raised an additional ground on the basis of the provisions of the Act, more particularly, contending that in view of the provisions of section 4 (1)(b) read with section 4 (7) of the Act, open plots of land belonging to a cooperative housing society and allotted/let out to its members were not includible in the net wealth to be computed for the purposes of levying wealth-tax. The Tribunal dismissed the assessee's appeal after giving a finding that the assessee and his brothers were given leasehold interest in the lands in question for a period of 998 years. The Tribunal held that if a cooperative housing society is having a building then the provisions of section 4(7) of the Act would apply but if a cooperative housing society is having open plots of land, as in the instant case, then such cases would fall under section 4 (1)(b) of the Act. The Tribunal further relied on Rule 2 of the Wealth-tax Rules relating to valuation of the property. The Tribunal also held that since the plots of land in question had been leased out only to the assessee and his brothers, whatever value was determined in the hands of the societies would be the value in the hands of the assessee and his brothers. Since that value was worked out by a technical person i.e. assessee's authorised valuer, the Assessing Officer was justified in relying on the said valuation. The Tribunal also held that approved valuer was conscious of the terms and conditions contained in the byelaws of the Society and the fact that the plots of land in question were leased out to the assessee by the cooperative societies. The Tribunal accordingly dismissed the appeal. After the assessee's appeal was dismissed by the Tribunal by its order dated 14-7-1986, the assessee moved a miscellaneous application contending that certain legal contentions raised by the assessee were not dealt with by the Tribunal. The Tribunal dismissed the miscellaneous application. The assessee preferred the second miscellaneous application which also came to be rejected by the Tribunal. Hence, this reference at the instance of the assessee.

4. As regards the first question which is on the merits of the controversy, Mr. K.H. Kaji learned counsel for the assessee has raised the following contentions:-

4.1 The legislature intended to include in the net

wealth only the building/s or part thereof owned by a cooperative housing society and allotted / let out to its members along with the land appurtenant thereto but open plots of land as such were not to be included in the net wealth. The provisions of section 45 (g) of the Act specifically provide that no tax shall be levied under this Act in respect of the net wealth of any cooperative society. In view of similar exemption granted to any shares in any cooperative society by section 5 (1) (xxviii), all the rights (including the leasehold interest in the open plots of land belonging to the cooperative housing society) which flow to the members of a cooperative housing society from the shares held by the members in a cooperative housing society are exempt from the liability to wealth-tax.

4.2 In view of the provisions of clauses (xxvi), (xxix) and (xxx) of section 5 (1) of the Act, any deposits with a cooperative housing society made by a member of the society are also exempt from liability to wealth-tax. This submission was made with reference to the alternative submission of the assessee before the Tribunal that the only deposits with the cooperative housing societies in question were exigible to tax and not the leasehold interest in the open plots of land.

5. Mr.Naik has submitted that the question as referred by the Tribunal is only about determination of value of the assessee's 1/4th interest in the open plots in question.

Mr. Kaji has submitted that the controversy raised before this Court was very much raised before the Tribunal and considered in detail as is apparent from the Tribunal's order, more particularly, when the Tribunal has noted that it permitted the assessee to raise the additional ground based on the provisions of section 4 (1)(b) and section 4 (7) of the Act, and considered the same and decided it against the assessee on merits.

6. On merits, Mr. B.B. Naik, learned counsel for the revenue has submitted as under:-

6.1 As per the provisions of charging section i.e. section 3 of the Act, wealth tax is chargeable in respect of net wealth of every individual. The net wealth has been defined by section 2 (m) of the Act - as the amount by which the aggregate value of all the assets belonging to the assessee on the valuation date is in excess of the aggregate value of all the debts owed by the assessee on the valuation date except certain specified categories of

debts. Section 2 (e) defines "assets" as including property of every description, movable or immovable and also including any interest in property where the interest available to an assessee is for a period exceeding six years from the date the interest vests in the assessee. In the facts of the instant case, the leasehold interest in favour of the assessee and his brothers granted by the cooperative housing societies in question was for a period of 998 years and, therefore, the assessee's share in the leasehold interest in the open plots in question in the concerned cooperative housing societies was certainly an asset and, therefore, part of the net wealth as defined by section 2 of the Act.

6.2 Section 4 (1)(b) cannot be read in isolation. The scope of section 4 (1) of the Act is to include within the net wealth of an individual certain assets by deemed fiction under clause (a) of subsection (1) of section 4 and by clause (b), the value of the assessee's interest in the partnership firm or an association of persons is required to be determined in the prescribed manner i.e. as provided by Rule 2 of the Wealth-tax Rules. All that Section 4 (1)(b) means in this context that for the purposes of this subsection an association of persons does not include a cooperative housing society, but that cannot have the effect of granting an exemption to property which is definitely an asset as defined by section 2 (e) of the Act.

6.3 Subsection (7) of section 4 covers both, the building as well as land, for exigibility to wealth tax.

6.4 Under section 5 (1)(xxviii) what is exempted is merely the value of assessee's share in a cooperative housing society but the assessee's leasehold interest in a plot of land or in a building belonging to a cooperative housing society is not exempted.

7. We find that Mr. Kaji's submission about the contents of the controversy is fully borne out by the order of the Tribunal. We are, therefore, of the view that question No.1 referred by the Tribunal really seeks to raise the following controversy and we accordingly reframe question No.1 as under:-

"Whether on the facts and in the circumstances of the case and on proper interpretation of section 4 (1)(b), 4 (2) and 4 (7) of the Wealth-tax Act, 1957, the Tribunal was justified in upholding the

action of the Wealth Tax authorities in including the value of the assessee's 1/4th interest in the open plots in question in two cooperative housing societies (valued at Rs.40,125/-) in the net wealth of the assessee?"

8. Before dealing with the rival submissions, it would be necessary to set out the relevant statutory provisions. Section 3 of the Act, which is the charging section, reads as under:-

3. Subject to the other provisions contained in this Act, there shall be charged for every assessment year commencing on and from the first day of April, 1957, a tax (hereinafter referred to as wealth-tax) in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the rate or rates specified in Schedule I.

Clause (m) of section 2 defines "net wealth" as

under:

"net wealth" means the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owed by the assessee on the valuation date other than -

(i)

(ii)

(iii)

Clause (e) of section 2 defines "assets" as

under:-

"assets" includes property of every description, movable or immovable, but does not include,-

(1)

(2) in relation to the assessment year

commencing on the 1st day of April, 1970, or any subsequent assessment year -

(i)

(ii)

(iii) any interest in property where
the interest is available to an
assessee for a period not
exceeding six years from the date
the interest vests in the
assessee:

Provided that

Provided further that

Section 4 (1), in so far as it is relevant for
the purposes of the present controversy, reads as under:-

Net wealth to include certain assets.

4(1) : In computing the net wealth of an
individual, there shall be included, as belonging
to that individual -

(a)

(b) where the assessee is a partner in a firm
or a member of an association of persons
not being a cooperative housing society,
the value of his interest in the firm or
association determined in the prescribed
manner.

Subsection (7) of section 4, reads as under:-

(7) Where the assessee is a member of an
association of persons, being a cooperative
housing society, and building or a part thereof
is allotted or leased to him under a house
building scheme of the society, the assessee
shall, notwithstanding anything contained in this
Act or any other law for the time being in force,
be deemed to be the owner of such building or
part and the value of such building or part shall
be included in computing the net wealth of the
assessee; and, in determining the value of such

building or part, the value of any outstanding installments of the amount payable under such scheme by the assessee to the society towards the cost of such building or part and the land appurtenant thereto shall, whether the amount so payable is described as such or in any other manner in such scheme, be deducted as a debt owed by him in relation to such building or part.

Explanation

(a)

(b)

(c) the expression "property" includes any interest in any property, movable or immovable, the proceeds of sale thereof and any money or investment for the time being representing the proceeds of sale thereof and where the property is converted into any other property by any method, such other property.

Section 5 (1):

5(1): Subject to the provisions of sub-section (1A) wealth-tax shall not be payable by an assessee in respect of the following assets, and such assets shall not be included in the net wealth of the assessee-

.....

(xxviii) any shares in any cooperative society;

Section 45 (g), reads as under:-

45 : No tax shall be levied under this Act in respect of net wealth of -

.....

(g) any cooperative society;

(emphasis supplied)

It is required to be noted that the underlined words in section 4 (1)(b) as well as the entire provisions of subsection (7) of section 4, clause (xxviii) in section 5 (1) and section 45 (g) of the Act pertaining to cooperative housing society were all

inserted by the legislature w.e.f. 1-4-1972.

9. An analysis of the aforesaid provisions would reveal that the properties belonging to a cooperative housing society are completely exempt from the liability to wealth-tax. So also the shares held by an individual in a cooperative housing society are also exempt from the liability to wealth-tax under section 5 (1) (xxviii). In view of section 5 (1) (xxviii), it is obvious that the shares in a cooperative housing society and all the rights flowing therefrom have been completely exempted from the liability to wealth-tax. However, while granting such exemptions w.e.f. 1-4-1972 under the aforesaid clauses, the Legislature inserted the underlined words in section 4 (1)(b) so as to ensure that each and every interest of the member in a cooperative housing society is not to be included in the net wealth. Which property of the assessee is to be included in the net wealth for the purposes of exigibility to wealth-tax w.e.f. 1-4-1972 is specifically provided for in subsection (7) of section 4 of the Act. The said provision only covers a building or a part thereof belonging to a cooperative housing society and allotted or leased to a member of the society and while computing the value of such building or a part thereof, cost of such building or part thereof and cost of the land appurtenant thereto has to be calculated (under Rule 1 BB of the Wealth Tax Rules).

10. The submission of Mr. Naik learned counsel for the revenue that the expression "building or a part thereof" would also include open plot of land, cannot be accepted. The legislature in its wisdom did not use the expression "property" which is an expression of widest amplitude and which expression has been defined by Explanation (c) to section 4 as including any interest in any property, movable or immovable. Similarly, the expression "assets" has been defined by section 2 (e) as including property of every description, movable or immovable and even leasehold interest in a property for a period exceeding six years has also been included in the definition of "assets". When the legislature has used expressions "assets" and "property" which are expressions of widest amplitude in other provisions of the Act but has used the expression "building or part thereof" in section 4 (7) it has to be held that the legislature intended to include only the building or a part thereof along with the land appurtenant thereto for including the value thereof in the net wealth for the purpose of levying wealth-tax. The contention of Mr. Naik for the revenue that there was no rationale for leaving out the

open plot of land belonging to a cooperative housing society and let out to a member from the liability to the wealth-tax may be an argument which may be required to be canvassed before the Legislature. But as far as the Court is concerned, the Court is bound to interpret and apply the provisions of the Act as they stand without going behind the wisdom of the Legislature in including within the wealth tax net only the building and land appurtenant thereto and allotted to a member of a cooperative housing society and in not including open plots of land belonging to a cooperative housing society and allotted/let out to its members.

It is also pertinent to note that section 3 levies wealth tax on the net wealth of an individual, and section 2 (m) defines net wealth as excess of all assets belonging to the assessee in excess of all the debts owed by the assessee on the valuation date. In order to obviate the argument that a building owned by a cooperative housing society and allotted to a member does not belong to the member, subsection (7) of section 4 expands, by a legal fiction, the limited rights of a member of a cooperative housing society in the building with or without the land appurtenant thereto allotted or let out to the member (which may be in the nature of leasehold interest or any other limited interest) into the ownership of such building or part. The Legislature has not applied such fiction to the interest of a member of a cooperative housing society in open plots of land. On the contrary, the Legislature has not only granted exemption under section 5 (1)(xxviii) of the Act to the shares in a cooperative housing society (subject to the exception of imposing wealth-tax liability on the member's right to a building or a part thereof) but has also gone further in providing in section 4 (1) (b) that while the value of the assessee's interest in a partnership firm or an association of persons is to be included in the net wealth of the assessee but his interest in the cooperative society is not to be included. To this double immunity granted by the Legislature to a member of a cooperative housing society under section 5 (1)(xxviii) read with section 4 (1)(b) of the Act, the only dent made by the Legislature is to the member's interest in a building or a part thereof belonging to a cooperative housing society and allotted / leased to a member under the house building scheme of the society. In view of the aforesaid clear statutory provisions, there is no justification in accepting the argument of the learned counsel for the revenue that the expression "building or part thereof" should also be treated as including open plot of land.

11. As regards the contention of the learned counsel for the revenue that what is exempted under section 5 (1)(xxviii) is only the shares in the cooperative housing society and not the leasehold interest in open plot of land belonging to the cooperative housing society, the argument is incomprehensible. It is only by virtue of his being a member of the cooperative housing society on the strength of holding shares in the society that the member is allotted any plot of land or any building. In response to a query from the Court whether a member can sell all his shares in a cooperative housing society and still retain any interest in any property whether land or building belonging to a cooperative housing society and allotted / let out to the member or whether any member can transfer all the rights to possession, usufruct and other rights relating to the property without selling the shares held by him, the learned counsel for the revenue submitted that the shares as well as interest in the land or building are two separate properties and the legislature has granted exemption under section 5 (1)(xxviii) only qua shares in a cooperative housing society and not qua interest in the land or building, we are unable to accept this contention because the learned counsel has not been able to point out any provision of either the Gujarat Cooperative Societies Act or the Rules framed thereunder or the byelaws of the cooperative society which contemplate interest in the property belonging to a cooperative housing society being permitted to be held by a person without holding its shares. We, therefore, proceed on the basis that when the legislature granted exemption under section 5 (1)(xxviii) of the Act in respect of shares in a cooperative housing society, the Legislature intended to grant exemption in favour of all the rights flowing from shares in a cooperative housing society except the interest, which the Legislature itself brought in within the tax net by making an express provision in subsection (7) of Section 4 of the Act.

12. The learned counsel for the revenue relied upon the decisions in Ahmed G.H. Arif vs. CWT 59 ITR 123, CWT vs. H.H. Smt. Rajkuverba 86 ITR 783, M. Sulochanamma vs. CWT 85 ITR 201, F.S. Chandhi vs. CWT 184 ITR 34.

We do not consider it necessary to deal with any of the authorities as none of those cases was concerned with the question about the wealth-tax liability in respect of open plots of land belonging to a cooperative housing society and allotted/ let out to its members.

13. In view of the aforesaid discussion, we are of the view that a member's interest in an open plot of land belonging to a cooperative housing society and allotted or let out to the member is exempt from the liability to wealth tax and the Tribunal erred in holding to the contrary.

14. We also find considerable substance in the submission of Mr. Kaji for the assessee that the concession made on behalf of the assessee before the Tribunal that if at all anything was includible within the net wealth of the assessee it was the assessee's deposit with the cooperative housing society, the said submission was based on a mistake of law and the assessee need not be bound by such a mistake made on his behalf before the Tribunal. The provisions of clause (xxx) grant exemption in respect of any deposit with a cooperative housing society made by a member of the Society to whom a building or part thereof is allotted or leased under a house building scheme of the society, where such deposits have been made under such scheme. Since the assessee was not allotted a building or part thereof, as already stated above, clause (xxx) would not apply but clause (xxix) would certainly apply as it provides for exemption in favour of any deposits with a cooperative society, not being deposits referred to in clause (xxvi) (applicable to deposits in a cooperative bank) or clause (xxx) made by a member of the society. The case would, therefore, fall under clause (xxix) of section 5 (1) of the Act.

15. In view of the foregoing discussion our answer to question No.1 as reframed by us and set out in the paragraph 7 hereinabove is in the negative i.e. in favour of the assessee and against the revenue.

16. In view of our answer to question No.1, question No.2 becomes academic and is accordingly not required to be answered. We accordingly decline to answer question No.2.

17. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J)

(D.A. Mehta, J)

zgs/-

